UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROSARIO R. TINA and JESUS G. TINA, Plaintiffs, vs. DOWNEY SAVINGS AND LOAN ASSOCIATION, F.A. AND DSL SERVICE COMPANY, Defendants.	CASE NO. 08CV1004 BTM (POR) ORDER RE: MOTION FOR EX PARTE TEMPORARY RESTRAINING ORDER

On June 5, 2008, Plaintiffs filed a complaint and Emergency Motion for Ex Parte Temporary Restraining Order ("TRO motion"). Plaintiffs attached to this complaint and motion a certificate of service generally stating that a copy of the "Complaint has been furnished to Defendant." This certificate of service is not sufficient to establish that Defendant has been served with the complaint and summons as required in Federal Rule of Civil Procedure Rule 4. The Court therefore finds that Defendants have not yet received proper notice of Plaintiff's TRO motion.

Pursuant to Federal Rule of Civil Procedure Rule 65(b), the Court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Because Plaintiffs have not made the above showing in their complaint or TRO motion, the Court concludes that Defendant must first be properly served and have an opportunity to respond before the Court can issue a ruling on the TRO motion.

Plaintiffs shall serve Defendants as required in Federal Rule of Civil Procedure Rule 4 with a copy of the complaint, summons, TRO motion and this order by June 10, 2008. Plaintiffs shall file proof of service by June 11, 2008. Defendants shall file a response to Plaintiff's TRO motion by June 16, 2008. Plaintiffs shall file any reply by 9:00 a.m. on June 18, 2008. The Court shall hear oral argument on this TRO motion on June 18, 2008 at 4:00 p.m. The above briefing schedule and hearing date will be vacated if Plaintiffs do not effect service as set forth above.

IT IS SO ORDERED.

DATED: June 5, 2008

Honorable Barry Ted Moskowitz
United States District Judge